

A

STATE OF U.P. AND ORS.

v.

SMT. DAMYANTI SINGH AND ORS.

JANUARY 27, 1997

B

[K. RAMASWAMY AND G.T. NANAVATI, JJ.]

*Service law :*

*U.P. Intermediate Education Act, 1921 :*

C

*Appointment of Teacher—School functioning as upgraded School—Entitlement to be made permanent teacher with consequential benefits—Suit decreed—Confirmed by High Court—On appeal held on the basis of records the respondent was working against leave vacancy and her name not found in the approved list—Hence she was not duly appointed to the post of*

D

*Teacher—Courts below misread the documentary evidence and did not consider the effect of the Division Bench judgment rejecting her writ petition praying for a direction that she was duly appointed by the Management and for payment of arrears of salary.*

E

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 590 of 1997.

From the Judgment and Order dated 22.9.95 of the Allahabad High Court in S.A. No. 1959 of 1991.

R.C. Verma, S.P. Khera and R.B. Misra for the Appellants.

F

Lalita Kohli, C. Siddarth, Manoj K. Misra and Manoj Swarup for the Respondents.

The following Order of the Court was delivered :

G

Delay condoned,

Leave granted.

H

This appeal by special leave arises from the judgment of the High Court of Allahabad, made on September 22, 1995 in Second Appeal no. 1959 of 1991. The admitted position is that Mahadeo Prasad Vishwanath

Prasad Girls High School, Harraiya was functioning as an upgraded school from July 14, 1977. It is the case of the first respondent that she was appointed as a teacher and therefore, she is entitled to be permanent teacher in the School with consequential benefits as she was regularly appointed. The courts below granted the decree which has been, on appeal confirmed by the High Court. Thus, this appeal by special leave..

We directed the respondents to produce the record of the returns given by the Management with regard to the teachers working in the institution after the upgradation w.e.f. July 14, 1977. The records have been placed before us. The records indicate that for the year 1977-78 and 19778-79, admittedly, the name of the first respondent does not find place. With regard to 1979-80, it is seen that she was working against a leave vacancy. On September 9, 1982, the approval consisting of 9 names in respect of the teachers working in the High Court School was given but it did not mention the name of the first respondent. This factual position was also accepted by the District Judge but he held that she cannot be penalised for the mistake of the Management in not sending the name of the first respondent. We fail to appreciate the view taken by the District Judge and approved by the High Court as correct. The official reports reflect the correct state of affairs. Since the approval of the authorities is required under the *U.P. Intermediation Education Act, 1921*, after upgradation of the school w.e.f. July 14, 1977, it would be axiomatic that appointment of the staff working in the school would get approved by the competent authority. Otherwise, the same cannot be recognised and treated as regular so as to be entitled to receive aid from the Government. It is not in dispute that Writ Petition No. 7989/1983 was filed by the respondent in the High Court claiming payment of the arrears of the salary. The Regional Inspectoress of Girls School, Gorakhpur had filed the counter-affidavit in the High Court disputing that correctness of her status as she had been duly appointed by the Management. The Division Bench of the High Court by order dated August 9, 1983 dismissed the Writ Petition with the observation as under :

"In view of the averments made in paragraph No. 5 and 6 of counter affidavit filed on behalf of the Regional Inspectoress of Girls Schools, we find no merit in the writ petition."

It would, thus, be seen that the contention of the first respondent

- A that she was duly appointed by the Management was not accepted by the High Court. Consequently, the claim for payment of the arrears of salary was rejected. In view of the above decision and in view of the records placed before us, obviously, the courts below have misread the documentary evidence and did not consider the effect of the Division Bench judgment of the High Court. The single Judge of the High Court did not advert to the effect of the judgment at all on the ground that it was a finding of fact and came to the conclusion that the first respondent was duly appointed to the post of teacher.
- B

- C The appeal is accordingly allowed. The decree of the courts below as well as High Court judgment stand set aside. The suit stands dismissed. No costs.

G.N.

Appeal allowed.